

# CULTURE, RECREATION & TOURISM CABINET MEMBER MEETING

**Agenda Item 13**  
Brighton & Hove City Council

**Subject:** The future management arrangements of Council sports facilities

**Date of Meeting:** 15 June 2010

**Report of:** Director of Environment

**Contact Officer:** Name: Toby Kingsbury **Tel:** 29-2701  
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**Key Decision:** Yes

**Wards Affected:** All

## FOR GENERAL RELEASE

**Although this is a Key Decision, it does not currently appear on the council's Forward Plan. Given the tight procurement timetable involved with the tender, it would not be possible to defer this decision to the next Cabinet Member Meeting.**

### 1. SUMMARY AND POLICY CONTEXT:

- 1.1 The current sports facilities management contract with DC Leisure ends on 31 March 2011. The King Alfred Leisure Centre does not form part of the contract and is currently managed 'in-house'. This report sets out the options for the future management arrangements of council sports facilities.

### 2. RECOMMENDATIONS:

- 2.1 To request approval from the Cabinet Member for Culture, Recreation and Tourism that the council should prepare tender documents and carry out a procurement process in accordance with the timescales set out in paragraph 6.1.
- 2.2 To request approval from the Cabinet Member for Culture, Recreation and Tourism that the council should include the King Alfred Leisure Centre in the procurement process and invite bids as a separately priced element of the wider contract.

### 3. BACKGROUND INFORMATION:

- 3.1 The existing sports facilities contract was awarded to DC Leisure who have been operating the following facilities since April 2004:

Prince Regent Swimming Complex & Old Slipper Baths  
Withdean Sports Complex  
Moulsecoomb Community Leisure Centre  
Stanley Deason Leisure Centre  
St Luke's Swimming Pool  
Saunders Park, The Level and Seafront Paddling Pools

- 3.2 The length of the current contract is five years with the option to extend for an additional two years. This option was taken up following satisfactory performance and a positive working relationship between DC Leisure and the council.
- 3.3 DC Leisure recorded a total of 785,000 visits across the sites in 2009/10 which represents a 25% increase from the first year of the contract, 2004/05. They have also achieved Quest accreditation during the contract period with four of the sites in the 'Highly Commended' category. Quest is a nationally recognised quality standard for sports centre management.
- 3.4 The King Alfred Leisure Centre was not included in the contract because of its planned redevelopment. It remained 'in-house' under the assumption that it would be closed and redeveloped during the contract period.
- 3.5 The redevelopment subsequently did not take place and the management of the King Alfred Leisure Centre remained 'in-house'. A condition survey of the buildings and plant was undertaken in October 2008 which highlighted a series of urgent works and £1.5 million was invested to ensure the building remained operational in the short-term. A further £0.75 million has also been made available for improvement works.
- 3.6 During the current contract period there have been significant increases in the cost of utilities and this is likely to be reflected in the tender submissions. Brighton & Hove Albion moving from Withdean Sports Complex to the new stadium at Falmer in July 2011 will also have a detrimental effect upon the contract fee. Recent years have seen social enterprise trusts emerge strongly within the sports facilities management market as a result of their ability to claim relief from business rates and VAT. The potential increases to the contract fee may therefore be balanced in the event that the preferred operator has social enterprise trust status.

#### **4.0 SOFT MARKET TESTING**

- 4.1 The council has carried out soft market testing with four management operators in order to learn more about the current market and to gauge opinion on the following key elements of the future contract:

##### **Length of contract**

- 4.2 Whilst there are no specific minimum or maximum terms of contract, operators are generally working on contracts of between five and fifteen years. Many local authorities require capital investment in their facilities and the length of contract will often determine how much the operator is prepared to invest. A longer contract is likely to attract more capital investment because the operator is more likely to see a return on this investment. This is borne out through recent experience with the golf courses contract which is a ten year contract (with the option to extend for two further years.)

- 4.3 Further research has shown that a number of local sports facilities management contracts have been let for periods of ten years or more. Both Crawley BC and Portsmouth City Council have recently let contracts for a period of ten years and Guildford BC are currently undertaking a procurement process for a ten year contract with the option to extend for a further four years. Southampton City Council has recently awarded a fifteen year contract to operate its leisure facilities.

### **King Alfred Leisure Centre**

- 4.4 The contacted operators were asked their opinion on including the King Alfred Leisure Centre within the contract. All of them suggested that this facility should be included, in order to provide a co-ordinated approach to leisure provision across the city. The current mix of contracted and 'in-house' provision is fragmented and does not allow for consistency of pricing and service levels across the sites.
- 4.5 If the King Alfred Leisure Centre was to be included, then the contract would need to be structured in such a way to allow it to be removed if it is closed for redevelopment or as a result of serious maintenance problems. Given the age and condition of the facility, careful consideration would also need to be given to maintenance responsibilities, in order to ensure both the council and the operator are very clear on liabilities and the associated levels of risk involved with them.
- 4.6 These issues could be addressed within the contract by including the King Alfred Leisure Centre as a 'non-core' facility with a 'break' clause inserted. This point is further explained in Part 8 of this report. The specification could have different liabilities to the rest of the contract. This approach is not uncommon amongst local authorities where the future of one or more of its facilities is uncertain and the authority wishes to retain some flexibility to the provision.
- 4.7 The option to include the King Alfred Leisure Centre within the management contract would therefore not inhibit or delay the council's ability to progress the future redevelopment of the facility.
- 4.8 The operators advised that they would be prepared to invest in the facilities and could all demonstrate a good record of investment at other authorities. The extent that they would be willing to invest is dependant upon the length of contract, as detailed above.
- 4.9 Based on the soft market testing research, this report recommends that the council prepares the tender documentation based on a ten year contract (with an option to extend for a further period of up to five years.) This length of contract is likely to attract more capital investment into the facilities, thereby improving the service to customers and increasing participation.

4.10 The report also recommends that the King Alfred Leisure Centre is included within the tender process and that potential operators are requested to provide a separately priced proposal for this. The council would then be in a position to assess whether it should form part of the contract once the bids have been submitted.

**5. TRANSFER of UNDERTAKINGS (Protection of Employment) REGULATIONS 2006**

5.1 There are 34 staff at the King Alfred Leisure Centre who are currently employed under contract by the council and would therefore be affected by a potential change in management arrangements. Under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”) their terms and conditions of employment would remain the same following any transfer to a new operator and the process would be managed in accordance with the council’s Organisation Change Management Framework.

5.2 Potential operators will be required to demonstrate experience of TUPE transfers and understand the procedures involved.

**6. TIMESCALES**

6.1 An indicative procurement timetable is as follows:

Actions	Dates
Cabinet Member Approval	June 2010
Issue and Evaluate Pre Qualifying Questionnaire	June/July 2010
Scrutiny consultation/workshop	July 2010
Issue Invitation to Tender	Aug 2010
Evaluate Tender Proposals	Oct 2010
Cabinet Approval and Award of Contract	Dec 2010
Commencement Date of Contract	April 2011

**7. CONSULTATION**

7.1 Consultation with staff affected by the potential change in management arrangements at the King Alfred Leisure Centre is scheduled to start in June following an initial meeting with the unions.

7.2 A full timetable of consultation sessions is to be produced to ensure staff are fully briefed throughout the process and a ‘Frequently Asked Questions’ paper will be provided at the first session.

7.3 As with the golf course tender exercise, the Overview and Scrutiny process will be used to assist with a robust Invitation to Tender.

**8. FINANCIAL & OTHER IMPLICATIONS:**

### 8.1 Financial implications

Costs for the preparation of the tender documents are contained within the 2010/11 Leisure budget. At this stage it is not possible to identify the financial implications of retendering the sports facilities management contract. Full details of any efficiencies or pressures will be identified once the tender proposals have been received.

*Finance Officer Consulted: Derek Mansfield*

*Date: 1 June 2010*

### 8.2 Legal Implications:

The services referred to in this report are 'Part B' services for the purpose of EU procurement law and UK procurement Regulations, and therefore not subject to the full application of either. The Council is nevertheless required to comply with EU Treaty objectives of non-discrimination and openness in procurement, as well as comply with its obligation to seek Value for Money. It is proposed to advertise the tender in the Official Journal of the European Union ("OJEU"), which, together with other proposed tendering procedures, will help to ensure adherence to these objectives. Contracts valued in excess of £75,000 must be in a form approved by the Head of Law. The Council must take the Human Rights Act into account in respect of its actions, but it is not considered that any individual's Human Rights Act rights would be adversely affected by the recommendations in this report.

8.3 The council is not obliged to include the King Alfred Leisure Centre in the tender package. If it does so and during the contract term the Council decides to market the King Alfred site for redevelopment the break clause in the contract would be exercised. It is not anticipated that bidders will include redevelopment proposals within their bids, as enabling development would almost certainly be required and in such circumstances the primary element of the contract would be works as opposed to services. In other words the long term development solution for the King Alfred site will be separately procured. This point will be made clear within the tender documentation.

*Lawyer Consulted: Bob Bruce*

*Date: 02 June 2010*

### 8.3 Equalities Implications:

The operation of public sports facilities that are accessible to the local community is important to enable participation in sport thereby improving health and well-being.

### 8.4 Sustainability Implications:

The operation of public sports facilities involves high levels of energy consumption. Tenderers will therefore be asked to provide details of how

they intend to implement good practice with regard to environmental management and sustainability.

**8.5 Crime & Disorder Implications:**

There are no crime and disorder implications to consider.

**8.6 Risk & Opportunity Management Implications:**

There are TUPE implications to consider should the council decide to include the King Alfred Leisure Centre within the contract.

**8.7 Corporate / Citywide Implications:**

**9. EVALUATION OF ANY ALTERNATIVE OPTION(S):**

- 9.1 The option of not including the King Alfred Leisure Centre in the tender package has been considered and resulted in the recommended break clause mechanism, so that potential redevelopment is not prejudiced.

**10. REASONS FOR REPORT RECOMMENDATIONS**

- 10.1 The current contract expires at the end of this financial year and the council is not actively considering a redevelopment proposal for the King Alfred site.

**SUPPORTING DOCUMENTATION**

**Appendices:**

1. None

**Documents in Member's room**

1. None

**Background Documents**

1. None